



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:335. Financial audits.

6 RELATES TO: KRS 61.878(1)(c), KRS 224.60-130(1)(d), (i), (k), [(2)(d), (j), (k),]  
7 224.60-140(2)(a), (e)

8 STATUTORY AUTHORITY: KRS 224.60-130(1)(k) [(2)(k)]

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(k) [(2)(k)]  
10 requires the establishment of the policy, guidelines, and procedures to perform a financial audit  
11 of an owner or operator receiving reimbursement for corrective action services from the cabinet  
12 [fund], or of an entity who contracts or subcontracts for corrective action services at a facility  
13 whose owner or operator is eligible for [fund] reimbursement. This administrative regulation  
14 establishes procedures for audits and the penalties for noncompliance.

15 Section 1. An entity shall be subject to financial audit if it is an entity described in KRS  
16 224.60-130(1)(k). [(2)(k).]

17 Section 2. Financial Audit Policy and Procedure. (1) The cabinet shall audit an entity if:

18 (a) A document it is required to submit to the cabinet appears to be fraudulent; or

19 (b) There is evidence or other reason to believe that the entity has violated a federal or  
20 state law or regulation related to its actions. [~~actions under the fund.~~]

1 (2) A record shall be subject to financial audit if it is described in KRS 224.60-130(1)(k).

2 [~~(2)(k)~~.]

3 (3)(a) The cabinet shall notify the subject of the audit, in writing, of the date that the audit  
4 is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled  
5 start of the audit.

6 (b) A decision to reschedule the audit shall rest solely with the cabinet, and it shall not be  
7 rescheduled more than thirty (30) days after the date of the original audit.

8 (4)(a) If the owner or operator fails to maintain records as required by KRS 224.60-  
9 130(1)(k), [~~(2)(k)~~], the cabinet shall recover money reimbursed to the owner or operator for the  
10 cost of corrective action at the facility to which the missing documents relate.

11 (b) If an eligible contractor or subcontractor fails to maintain records as required by KRS  
12 224.60-130(1)(k), [~~(2)(k)~~], the cabinet shall recover any monies paid to the entity pursuant to a  
13 contract or agreement to perform a corrective action service at that facility. If the entity is  
14 certified under 401 KAR 42:316, that certification shall be revoked or suspended in accordance  
15 with 401 KAR 42:316, Section 5. [~~Section 3~~.]

16 Section 3. Improper Use of Reimbursements. [~~Fund Resources~~.] (1) If the audit by the  
17 cabinet finds an improper, irregular, or illegal use of money received directly or indirectly from  
18 the cabinet [~~fund~~], or that the money was obtained by fraud or misrepresentation, the cabinet  
19 shall report the results of the audit to the proper authorities for civil and criminal investigation.

20 (2) If the subject of the audit is certified pursuant to 401 KAR 42:314 or 401 KAR  
21 42:316, and the audit conducted by the cabinet finds improper, irregular, or illegal use of money  
22 received directly or indirectly from the cabinet [~~fund~~], or that the money was obtained by fraud

1 or misrepresentation, the cabinet shall immediately revoke the certification in accordance with  
2 401 KAR 42:314, Section 8 [~~Section 7~~], or 401 KAR 42:316, Section 5. [~~Section 3.~~]

3 (3)(a) Failure by an owner or operator to allow an audit shall render the petroleum  
4 storage tank owner or operator ineligible for reimbursement. [~~prohibit the owner or operator~~  
5 ~~from participating in the fund.~~] Reimbursements [~~Fund money paid~~] to the owner or operator  
6 shall be subject to recovery by the cabinet.

7 (b) Failure by a person certified pursuant to 401 KAR 42:316, or a supplier, provider,  
8 contract employee, or subcontractor of that person, to allow an audit shall result in the revocation  
9 of that certification. Reimbursements to that person, [~~Fund money paid to that person~~] pursuant  
10 to a contract for a corrective action service, shall be subject to recovery by the cabinet.

401 KAR 42:335 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary  
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Bruce Scott, P. E., Director  
Division of Waste Management  
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REGULATORY IMPACT ANALYSIS  
AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:335

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation details information related to financial audits and the penalties for noncompliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for financial audits and the penalties for noncompliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the procedures for financial audits and the penalties for noncompliance, as described in KRS 224.60-130 (1)(k).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation presents information related to financial audits which is a requirement of KRS 224.60-130(1)(k).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment makes minor revisions to the general language within this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment introduces changes that will make this administrative regulation conform to the amendments occurring in other regulations within Chapter 42.

(c) How the amendment conforms to the context of the authorizing statutes: This administrative regulation makes minor alterations to the language that will result in consistency within Chapter 42.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation makes minor changes to the regulation, which will assist in the effective administration of the statutes by allowing 401 KAR 42:335 to conform with the rest of Chapter 42.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The cabinet expects no significant impact from this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no costs associated with implementation of this administrative regulation.
- (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-145.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all eligible owner and operators of petroleum storage tanks. To apply tiering to the amendment would unduly regulate some entities with petroleum storage tanks while not regulating others.

## FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:335

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes   X   No        If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate USTs.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-130(1)(k) authorize the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect

Expenditures (+/-): No effect

Other Explanation: The cabinet expects no significant impact from this amendment.